

IN THE SENATE OF THE UNITED STATES.

MAY 23, 1896.—Ordered to be printed.

Mr. PASCO, from the Committee on Claims, submitted the following

ADVERSE REPORT:

[To accompany S. 741.]

The Committee on Claims, to whom was referred the bill (S. 741) for the relief of the Baptist Church at Corinth, Alcorn County, Miss., have carefully considered the same, and submit the following report thereon:

There are no papers or proofs before the committee except the reports made upon the case by the committees of each House during the Fifty-third Congress. From these reports it appears that the church, for the destruction of which compensation is sought, was burned sometime during the late war, in the immediate theater of military operations, while the section of country where it was located was occupied by the United States forces, and it is alleged that the burning was the act of soldiers belonging to the Army upon the evacuation of the town of Corinth by these forces.

While there may be some exceptional cases, it has not been the practice to allow compensation in cases of this character, for no liability is acknowledged on the part of the Government for damage or injury to private property resulting from actual conflict or even from wanton acts of destruction by soldiers or bodies of soldiers. However much we may regret or condemn such acts, the right of the Government to wage war to maintain its policy is absolute, and it can not be held liable in damages for the results, whether direct or remote.

The rule which has been followed in such cases, and the reasoning which supports it, were clearly stated in a report (No. 489) made by this committee during the Forty-eighth Congress and prepared by the former Senator from Oregon, Mr. Dolph.

The case then pending was upon a petition of the chairman of the Virginia Conference of the Methodist Episcopal Church asking for compensation for houses of worship, and fixtures, furniture, and other property contained therein and connected therewith belonging to this religious organization and injured or destroyed during the late war and by the results thereof. Other cases were before the committee, and some reference was made to them, but the report was made upon the case mentioned.

The following extract is taken therefrom, and is adopted as a part of this report:

The petition is very general in all its statements. It alleges the destruction and appropriation by the public forces of the United State of various church buildings and their furniture, the legal titles to which were vested in the trustees of the several religious associations before mentioned. It appears that this property, at the time

of its destruction, was in that part of the State of Virginia which was the scene of early hostilities in the war of the rebellion. The church buildings were used as block houses and were loop-holed for musketry. On other occasions they were used as hospitals for the sick and wounded; the pews were taken out, and the timber and bricks carried off to construct winter quarters for the troops. It would hardly be denied that, if the property in this case had belonged to individuals and instead of being church property had been used for ordinary purposes, the destruction and appropriation relied upon as a ground for compensation would not warrant us in giving any relief. It can not be denied that the principles of public law which forbid the useless destruction and plunder of private property are just as applicable and obligatory in a contest like that of the late rebellion as in a war between independent states. But the restraints which operate upon the armies of one belligerent power when engaged in hostilities within the territory of another are purely moral restraints. No legal liability can result from any infraction of the law of humanity or morals in such cases.

If private property is taken when it ought not to be; if the torch is applied by ruthless soldiers to private dwellings when necessity does not require such extreme measures, such acts may be condemned by public opinion and the perpetrators may expose themselves to the penalties of military law, but they afford no ground for a claim for compensation against the Government whose soldiers committed them, exceptional cases of hardship and severity may induce governments at times to give aid to the unfortunate and to compensate for losses sustained by violations of public law, but such cases are addressed to the mercy and grace of rulers, and are not founded in any legal obligation.

Taking this case as presented by the petition of the chairman of the Virginia Conference, and it appears to be one of a very large class of cases which occurred during the late war for which no provision has yet been made by law, it does not appear in the petition or the affidavits before us that the property was either destroyed or appropriated by order of any responsible officer in the service of the United States. It is true that circumstances are stated from which a knowledge of such destruction or appropriation on the part of those in command of the troops might be inferred, and if there were but a few cases of this character calling for redress we might risk a judgment in favor of the claimant which would imply that the property was destroyed or used by direction of competent authority. But we can not forget that the late war has given existence to a large number of cases similar to those mentioned in this petition, and it is believed equally as meritorious, and if the Government feels it to be its duty to make compensation for the loss or destruction of property under the circumstances set forth in this case it would be better to do so under the provisions of a general law, which would contain strict rules against fraud, as well as secure impartiality to all meritorious claimants.

It is impossible to arrive at an accurate conclusion touching the value of the property in this case. The petition addressed to us is not sworn to; some of the affidavits are not satisfactorily attested. There is no evidence to show that the persons before whom they were taken were even officers authorized to administer an oath, unless we accept the letters J. P., written after their names in an unknown hand, as evidence of the fact. Although the names of the officers in command of the troops at the time the property was destroyed are given, it does not appear that any effort was made to obtain their testimony, if living, or to explain this omission by showing that they are dead. The case of the Arlington Heights church was before the Forty-third Congress, and a report was made in that case by Mr. Pratt, of this committee, and he recommended the appropriation of \$2,000 to indemnify the trustees of that church for the destruction and use of Hunter's Chapel. He based his conclusion in favor of the claimant in that case upon the fact that the property was used for religious purposes, and strongly intimated that cases of that kind were entitled to more favorable consideration than cases where the losses fell upon private individuals.

Without attempting to discuss the soundness of the distinction taken by the able author of that report, we are safe in saying that if the distinction as laid down by him is to prevail and this Government is bound to pay for all property of religious bodies used or destroyed by the Army of the United States during the rebellion, then justice to all denominations of Christians who have met with losses of the character set forth in the petition before us would seem to require the passage of a law providing for the impartial adjudication and payment of all such claims.

Our committee are reluctantly compelled to deny the prayer of the petition in this case, as they do not feel warranted in recommending an appropriation of public money for the payment of the several claims set forth in this petition, and ask to be discharged from the further consideration of this case.

This report was adopted by the Senate, and has been followed and treated as a precedent in like cases since then, and it must be the guide

of the committee until, by the enactment of some general law, a different policy should be established.

It is true that a favorable report was made by this committee near the close of the Fifty-third Congress upon a bill having the same general purpose in view as that now pending, but no reasons appear in it making the case an exceptional one, and the report was not adopted by the Senate.

The committee feel bound to accept the approved precedents in dealing with this case rather than this unapproved report, and recommend that the bill be indefinitely postponed.



